

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 93-155
)	
RICHARD BOTT II)	File No. BAPH-920917GO
)	
and)	
)	
WESTERN COMMUNICATIONS, INC.)	
)	
For Assignment of Construction Permit for)	
Station KCVI(FM), Blackfoot, Idaho)	

To: The Honorable Arthur I. Steinberg

PETITION TO INTERVENE

Radio Representatives, Inc. ("RRI"), by its attorneys and pursuant to Section 1.223(b) of the Commission's rules, hereby petitions to intervene in the captioned proceeding and for the designation of the following additional issues:

- (d) To determine in light of the facts disclosed in Bott's opposition to the petition to deny filed in the instant proceeding whether his integration pledge is too tenuous and impermanent to warrant credit.
- (e) To determine in light of the evidence adduced pursuant to the foregoing issue whether further action on the captioned application should be stayed and a petition for recall of mandate and for remand should be filed with the U.S. Court of Appeals for the D.C. Circuit pursuant to the Court's December 23, 1993 Order.

In support whereof, the following is shown:

RRI was an applicant for a new FM station in Blackfoot, Idaho. In that proceeding, the Commission ultimately upheld the award of the construction permit to Richard Bott II ("Bott") and the denial of RRI's competing application. Richard P. Bott, II, 5 FCC Rcd 2508 (1990). The U.S. Court

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of Appeals denied RRI's subsequent appeal. Radio Representatives, Inc. v. FCC, 926 F.2d 1215 (D.C.

of candor issues that relate to Bott's integration pledge. RRI is intimately familiar with the record in the comparative proceeding and is in a position to facilitate the Commission's fact-finding on the designated issues.

As both the Court of Appeals and the Commission have recognized, RRI has a very real interest in this hearing. The filing of the subject assignment of permit application raises fundamental questions about both Bott's fitness to be a Commission permittee and also the truthfulness of the representations on which Bott's putative comparative superiority in the Blackfoot new station proceeding was based. As part of Bott's integration pledge therein, he represented to the Commission that he would move to Blackfoot and serve as general manager of his new FM station. This commitment is in fundamental conflict with his current intention, as reflected in the subject application, to assign the Blackfoot construction permit to an unrelated party. Based on these inconsistencies and a series of apparent misrepresentations, on October 28, 1992 RRI filed a "Petition for Recall of the Mandate of the Court and for Remand to Reopen the Record." Although the Court denied the petition, this action was "without prejudice to refiling by either party, upon completion of the assignment proceeding." Thus, the Court left open the possibility of further judicial review and the denial of Bott's construction permit application

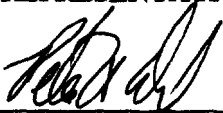
Moreover, it is clear that RRI will be prejudiced if it is not permitted to participate in this proceeding. Events subsequent to the grant of the permit have demonstrated that Bott's integration pledge is too tenuous, contingent and impermanent to warrant credit. See generally Bradley, Hand & Triplett, 89 FCC 2d 657, 662 (Rev. Bd. 1982). The Commission has recently underscored the importance of the permanence of integration which "provides structural, and therefore more objective assurances that the licensee will serve the public interest." Anchor Broadcasting Limited Partnership, 8 FCC Rcd 1674, 1676 (1993). Thus, even if Bott carries his burden of proof on the designated issues, the Commission should consider whether the award of integration credit to Bott in the comparative proceeding was improvident. Should the Commission so conclude, RRI respectfully submits that the Commission should file a petition for recall of mandate and for remand to permit the reopening of the record in the Blackfoot proceeding. In light of the substantial showings that RRI already has made in this regard and its substantial interest in the adjudication of these issues, the Commission should grant this petition to intervene. To fully address these issues, RRI proposes that the Presiding Judge add the issues specified above.

RRI has brought to the Commission's attention information which raises substantial issues about the basic and comparative qualifications of Bott. RRI has helped persuade the Commission that it must designate for hearing the subject application to fully explore these issues. The Presiding Judge in the exercise of his sound discretion should permit RRI to participate in the instant proceeding to assist the Commission in the adjudication and resolution of these issues.

For the above reasons, the Presiding Judge should grant this petition, designate the requested issues and permit RRI to intervene in this proceeding.

Respectfully submitted,

RADIO REPRESENTATIVES, INC.

By: 
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Peter H. Doyle

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Its Attorneys

July 21, 1993


DECLARATION

I, Norwood Patterson, declare as follows:

I am President of Radio Representatives, Inc., a former applicant for a new FM station in Blackfoot, Idaho.

I have reviewed the foregoing Petition to Intervene. I declare under penalty of perjury that the statements made therein are true, complete and correct to the best of my knowledge and belief, and are made in good faith.

7-20-93
Date


Norwood Patterson
President
Radio Representatives, Inc.

A conforming original copy of this Declaration will be filed in the next several days.

CERTIFICATE OF SERVICE

I, Myra F. Burke, a secretary in the law firm of Arter & Hadden, hereby certify that on this day, July 21, 1993, a copy of the foregoing "PETITION TO INTERVENE" was served on the following persons by first class U.S. mail, postage prepaid.

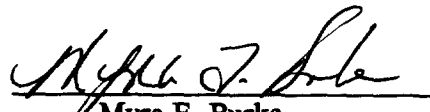
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* Via Hand Delivery